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CAMERAS IN COURT

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CAMERAS IN COURT

A CONTINUING CAMPAIGN by news photographers and television broadcasters to win removal of restrictions on picture-taking in the courts has been given fresh impetus. The Colorado supreme court ruled on Feb. 27 that judges of subordinate courts in that state have authority to decide whether to permit picture coverage of trials over which they preside. "Live" telecasting of a murder trial at Waco, Tex., last December, and recent admission of photographers to several other courtrooms, likewise have encouraged efforts to bring about lifting or modification of prevailing restrictions.

By performance in the courts and at a number of staged demonstrations, cameramen have convinced many judges and lawyers that technical improvements have made it possible to introduce press and TV cameras into the courtroom without detracting from the decorum of trial proceedings. There is therefore growing agreement with the contention of photographers that bans on cameras in court, based mainly on Canon 35 of the American Bar Association's Canons of Judicial Ethics, ought to be relaxed.

Ruling of Colorado Court Relaxing Camera Ban

The ruling of the Colorado supreme court was in the form of approval and adoption of a report by Associate Justice O. Otto Moore. Moore had presided a few weeks earlier, as court-appointed referee, over hearings at which press, radio, and television spokesmen presented arguments and demonstrations calculated to persuade the court to abandon observance of Canon 35, which it had previously adopted. The hearings were held "to explore the facts and the law in order . . . [to] determine whether Canon 35 should be repealed, amended, or continued and enforced in its present form."

Moore recommended, and the court adopted, a new rule, effective immediately and "until further order," allowing

pictures and broadcasts to be made in the courtroom under regulations prescribed by the trial judge. The new rule, said to be the first of its kind adopted by any state supreme court, stipulated, however, that no witness or juror should be photographed or televised over his objection. Although saying that not every case would be suitable for picture coverage, Moore observed in his report that the broad discretion that would be given trial judges by the new rule would afford "ample protection against abuses of the constitutional right of freedom of the press." He predicted that the rule would "lead to a cooperative effort . . . between the judiciary and the press to protect, preserve, and portray the judicial process upon the level of justice to which it actually attains."

Explaining why he recommended adoption of the new rule for Colorado courts, Moore said:

> Canon 35 assumes the fact to be that the use of camera, radio, and television . . . must in every case interfere with the administration of justice. . . . If this assumption of fact is justified, the canon should be continued and enforced. If the assumption is not justified, the canon cannot be sustained. For six days, I listened to evidence and witnessed demonstrations which proved conclusively that the assumption of facts as stated in the canon is wholly without support in reality.

Noting that picture-taking was carried on without interfering with the proceedings, that microphones were not noticeable, and that only normal lighting was necessary, Moore concluded that "The dignity or decorum of the court was not in the least disturbed."

The decision to hold the Colorado hearings grew, in part at least, out of a ruling in December forbidding picture-taking at the forthcoming trial of John Gilbert Graham, accused of having placed a bomb aboard a plane which crashed Nov. 1 and killed 44 persons. Photo, TV, and radio coverage of Graham's preliminary hearings had been permitted, and the two presiding judges had observed that the presence of cameras and recorders did not interfere with orderly courtroom procedure. News agencies therefore objected to banning cameras at the trial itself. Hugh B. Terry, president of Station KLZ-AM-TV, Denver, broadcast an editorial protest which was said to have convinced Justice Moore that the whole problem needed review.[1]

[1] *Broadcasting-Telecasting*, Feb. 13, 1956, p. 31. The Graham trial is now scheduled to open on Apr. 16.

CANON 35 OF A.B.A. CANONS OF JUDICIAL ETHICS

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness in giving his testimony, degrade the court, and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Provided that this restriction shall not apply to the broadcasting or televising, under supervision of the court, of such portions of naturalization proceedings (other than interrogation of applicants) as are designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization.

RECENT INSTANCES OF PERMISSION TO COVER TRIALS

Permission to make what is believed to be the first live telecast of a murder trial was granted on Dec. 6, 1955, in Waco, Tex.[2] Judge D. W. Bartlett said he allowed Station KWTX-TV of Waco to televise the trial because telecasting was the "coming thing and . . . should be allowed in courtrooms provided it does not distract from . . . [the] proceedings."[3] Another reason, he noted, was that "Under the theory of free speech, [the telecast was] . . . just an advancement of what . . . [has] always been covered . . . by reporters who come in and get their version, take some of the testimony down, put their interpretation on it, and run it in the papers." Bartlett felt that the telecast would depict what actually took place in the courtroom "more completely and more accurately" than a newspaper account.

> The picture will only reflect the facts and testimony that develop and show the actual procedure in court without any edging or interpretation . . . If it can do that under our theory of free speech, I think it is entirely admissible . . .
>
> I don't think anyone could object to the television being run while . . . [the trial] is on. It is perfectly quiet, it's outside the jury, and there's been perfect decorum of all concerned . . . I don't think there would be any reflection on any court to have . . . television carried on as it has been . . . in this court.[4]

Two weeks before the Waco trial was telecast, a broadcasting station in Milwaukee was permitted to shoot news

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[2] Permission to make TV films of trials had been granted in other localities as early as 1948. See p. 167.

[3] Quoted in *New York Times*, Dec. 7, 1955, p. 35.

[4] Quoted in *Broadcasting-Telecasting*, Dec. 12, 1955, p. 80.

film in a municipal court. A New York judge at the end of March 1955 allowed television films to be made and still pictures taken during a trial in Bronx Children's Court. TV film coverage of a session of the Charlotte, N. C., superior court was allowed a year ago.

News photographers were admitted to the courtroom during a murder trial in Camden, S. C., in November 1955. Special press passes were issued to cameramen who covered a sensational abortion-death trial in Philadelphia last month. Judge Vincent A. Carroll, who presided at that trial, said he felt that photographers should be given the same privileges as reporters. He commented that the three photographers who covered the proceedings with 33-mm. cameras "didn't interfere with the conduct of the trial as much as coughing . . . did." [5]

Demonstrations of Unobtrusiveness of Cameras

Such testimony by judges who have permitted news and TV photography in their courts is cited by opponents of the ban on picture-taking as proof of the unobtrusiveness of modern camera techniques. Further evidence that present-day equipment makes possible courtroom coverage without distraction has been offered at special demonstrations staged recently by TV representatives and news photographers.

TV live and film—as well as still—techniques were displayed at last month's Colorado supreme court hearings. Cameras were placed in a cloakroom behind a panel in which slits had been cut for the lenses. Three tiny microphones, which could be turned off by a switch controlled by Justice Moore, were concealed in the hearing room. By means of a television set placed at one end of the bench, the justice and others sitting with him could themselves view the proceedings as caught by the television cameras. Moore admitted that in some cases he had not been aware that cameramen were photographing him. "It has been demonstrated to my satisfaction," he said, "that pictures can be taken—even moving pictures—without attracting attention."

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[5] Not all recent photographic coverage of trials has elicited such favorable comment. During the first four weeks of the Sheppard murder trial in Cleveland in the autumn of 1954, some picture-taking was allowed in the courtroom while the jury and judge were absent. Photography during recesses was stopped eventually on the protest of defense attorneys. *Editor & Publisher* had observed that "If the coverage continues in the same sensational vein of the opening days, it could set the cause of courtroom photography back 20 years."

A similar demonstration had been put on last August at the annual convention of the American Bar Association in Philadelphia. A meeting of one of the A.B.A. sections was broadcast by three local television stations, and a closed-circuit telecast was made of the opening session of the House of Delegates, in an attempt to show that televising would not detract from the dignity of the proceedings.[6] Only regular room lighting was used, and the cameras were noiseless. "This test convinced the judges and lawyers that television . . . can operate without Hollywood trappings or floodlights and that it can do a faithful job of reporting." [7] After both the on-the-air and the closed-circuit telecasts, several participants said they had not known the proceedings were being televised.

Demonstrations of how unobtrusive modern newspaper photography can be have been given in the past few months by press photographers using miniature cameras without flash guns at mock trials in Philadelphia, Chicago, and Cleveland, among other places. At one such trial, staged during the A.B.A. convention last August, the reaction of the "judges" was divided. Charles W. Joiner of the University of Michigan Law School did not think the activities of the cameramen constituted a distraction. Herbert F. Goodrich, judge of the U.S. Court of Appeals for the Third Circuit, conceded that the picture-taking had been done smoothly, but he insisted that it had been distracting and contended that if witnesses had been present, as in an actual trial, the photographers would have "driven them crazy."

The four participating attorneys, whose roles most nearly approximated those of witnesses, all maintained, however, that they did not notice the photographers. One of the cameramen was Joseph Costa, chairman of the board of the National Press Photographers Association. He thought that the exhibition "proved conclusively that Canon 35, adopted in an era when press photographers did not have the versatile equipment of today, should now be relaxed." [8]

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[6] The A.B.A. has pointed out that the House of Delegates "voted to permit the . . . telecasting with the provision that its permission did not carry any commitment in favor of televising or broadcasting courtroom proceedings or . . . in favor of amendment of Canon 35."—"1955 Annual Meeting: Proceedings of the House of Delegates," *American Bar Association Journal*, November 1955, p. 1068.

[7] J. Frank Beatty, "The Silent Witness," *Broadcasting-Telecasting*, Aug. 29, 1955.

[8] Joiner, Goodrich, and Costa quoted by Glenn R. Winters, "The Photographer's Day in Court," *Journal of the American Judicature Society*, October-December 1955, pp. 74-77.

At mock trials held in Chicago and Cleveland, photographers using small cameras showed that pictures could be taken without causing any disturbance. Chief Justice Samuel H. Silbert of the Cuyahoga County (Ohio) Common Pleas Court, who presided at the Cleveland mock trial in February, said later that he had not realized that pictures were being taken. "It was done in an orderly and dignified manner and in no way . . . caused undue excitement to the court."

Steps Toward Reconsideration of Ban on Cameras

Attorney General Brownell told the National Press Photographers Association at Colorado Springs on June 9, 1955, that "Encouraging experiments have suggested the desirability of another look at Rule [Canon] 35." After the demonstration at the A.B.A. convention in Philadelphia the following August, Brownell was reported to have said that technical developments necessitated re-examination of Canon 35 to see if it conformed with facts of the present as well as those of the period in which it was adopted. An A.B.A. committee has been studying the matter for some time. Since April 1955 it has held several discussions with representatives of the American Newspaper Publishers Association, the American Society of Newspaper Editors, and the National Association of Radio and Television Broadcasters.

The American Bar Foundation announced last September that it had begun a study of all the Canons of Professional and Judicial Ethics "to determine if any of them require rewriting in the light of new conditions." The study was requested by the A.B.A. Board of Governors in 1953. Directed by an advisory committee headed by Judge Philbrick McCoy of California, the project may stretch over several years.

In the meantime, according to Chairman Costa of the N.P.P.A., which has been campaigning for lifting of the courtroom ban for a decade, the A.B.A. "continues to press for the adoption of Canon 35 by more of the state bar associations." [9] The council of the A.B.A.'s Section of Judicial Administration reaffirmed its approval of Canon 35 at a meeting in Chicago as recently as Feb. 20, 1956. That action was interpreted by some observers as notification to A.B.A.

[9] Joseph Costa in *Popular Photography*, November 1955, p. 148.

members not to open courtroom proceedings to photographers and broadcasters.

The national associations of both the broadcasters and the press photographers in general favor leaving the question to the discretion of the individual judge. Justin Miller, advisory counsel for the National Association of Radio and Television Broadcasters,[10] has suggested amending Canon 35 to provide that when photography or broadcasting disturbs the court, it should not be permitted "until satisfactory corrections have been made in the methods of taking photographs or of broadcasting and approved by the presiding judge."

A proposed revision drafted by N.P.P.A. stresses the fact that "in the light of present scientific advancements the visual record, co-equally with the printed word, is now fundamentally part of the publication . . . of news by a free press." It concludes, therefore, that picture-taking should be allowed "where . . . in the opinion of the judge . . . it appears that photographs can be taken . . . without interfering with the regular . . . procedure of the trial."

Restrictions On Taking Pictures In Court

PHOTOGRAPHERS long have been barred from most courtrooms in the United States, but the prohibition embodied in the American Bar Association's code of ethics dates back only to 1937. Canon 35 was adopted as a result of sensational publicity attending the Hall-Mills, Gray-Snyder, "Peaches" Browning, Bruno Hauptmann, and other trials of the 1920s and 1930s. Excesses in connection with the Hauptmann trial in 1935 especially contributed to adoption of the rule. "Bench and bar"—in the words of Attorney General Brownell—"were almost unanimous that regulation of the courtroom photographer was needed to achieve the impartial administration of justice." [11]

The A.B.A. in 1936 set up a Special Committee on Co-

[10] Miller formerly was an associate justice of the U.S. Court of Appeals for the District of Columbia and chairman of the board of N.A.R.T.B.

[11] Speech before National Press Photographers Association, Colorado Springs, Colo., June 9, 1955.

operation Between Press, Radio, and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings. Invitations were extended to the American Society of Newspaper Editors and the American Newspaper Publishers Association, both of which designated cooperating groups; despite the name of the A.B.A. committee, no bid for cooperation was made to the radio industry.

When the Special Committee submitted its report to the A.B.A. House of Delegates on Sept. 27, 1937, it indicated that agreement with the press groups had not been reached. The A.B.A. representatives were of opinion that "no photographic appliances or other news-registering devices" should be permitted in the courtroom without approval of the trial judge and, in addition, the consent of counsel for the accused (in criminal cases) and the consent of counsel for both parties (in civil cases). Newspaper association representatives maintained, on the other hand, that only the approval of the trial judge should be required.

The House of Delegates asked the Special Committee to make further efforts to come to an agreement, but three days later it adopted Canon 35 without discussion. The Special Committee remained in existence for several years and directed attention to continuing disagreement between bar and press. It made known in 1939 that representatives of the newspaper associations felt that adoption of Canon 35 had made further consideration by their groups useless, and two years later the Special Committee proposed its own dissolution. Canon 35 was amended in September 1952 to prohibit telecasting as well as photographing and radio broadcasting of court proceedings.[12]

Pervasiveness of Prohibitions In A.B.A.'s Canon 35

Although Canon 35 seemingly has had the force of law, it is only a rule of ethics. It derives authority from its adoption by courts in 13 states and by bar associations in at least 10 additional states.[13] In the states where the canon has not been adopted, it has only advisory status and picture-taking in the courts is left to the discretion of individual judges. But because the A.B.A. canons of ethics

[12] The impact of television on quasi-judicial hearings had been made plain by telecasting of various hearings held between February and June 1951 by the special Senate crime-investigating committee headed by Sen. Kefauver (D-Tenn.).

[13] Figures cited by Attorney General Brownell, speech before National Press Photographers Association, Colorado Springs, Colo., June 9, 1955. States where the canon was observed through adoption by the courts then included Colorado and totaled 14.

are everywhere respected by the legal profession, most judges abide by the recommended prohibition.[14]

The gist of Canon 35 is included in the Federal Rules of Criminal Procedure laid down by the U.S. Supreme Court for use in all federal proceedings. Rule 53, promulgated in 1944, states: "The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court."

Beginnings of a More Lenient Attitude on Cameras

Federal judges almost never allow a camera in court, although a federal judge in the state of Washington has permitted picture-taking during non-jury trials. State, county, and municipal judges tend to be more lenient, and over the years a number of them have granted still and TV photographers access to their courts. *The National Press Photographer*, organ of N.P.P.A., publishes each month an "honor roll" of judges who have admitted cameras to their courtrooms. Recent issues have listed such judges in more than a dozen states in almost all parts of the country.

A Fort Worth television station began filming trials for later broadcast as far back as 1948. In 1950 a Minnesota station made TV films of one day's session of a murder trial, and the following year a part of a California trial was televised. Still and newsreel photography has been permitted in some Houston courts for nearly five years. TV film coverage by Station WKY-AM-TV of trials in Oklahoma City has been described as "routine."

In many midwestern and western states picture-taking in courthouse corridors is countenanced. The Federal District Court and the U.S. Court of Appeals for the District of Columbia have modified their rules to allow picture-taking in the office of the U.S. marshal or in rooms assigned to the press, if the persons to be photographed give their consent. The chief judge of both those courts has given permission also for photo coverage of any event, other than a trial or hearing, over which a judge presides.

[14] *Editor & Publisher* noted on Feb. 11, 1956, that the A.B.A. membership of some 50,000 lawyers accounted for only about one-fourth of the nation's 220,000 lawyers and asked: "How does it happen that the rules and regulations of such a minority group should be adopted by state and federal courts . . . [and be given] the force of law over the conduct of lawyers and the press in courtrooms?"

COURT OPINIONS ON RIGHT TO PHOTOGRAPH PROCEEDINGS

The courts have held that the right of the press to attend judicial proceedings does not give photographers a right to take pictures when such action has been prohibited. The right of trial judges to cite for contempt those who violate rules against picture-taking has been upheld repeatedly. The principles involved were set forth in 1927 by the Maryland court of appeals. The *Baltimore News* and *Baltimore American* had published pictures of a trial, taken secretly with a small camera after the judge had announced that all picture-taking was forbidden. The lower court cited the editors and photographers for contempt and its judgment was sustained by the court above.

The Maryland court of appeals stated that if the right of the courts to forbid use of cameras during a trial "should yield to an asserted privilege of the press, the authority and dignity of the courts would be seriously impaired."

> The basic theory of the [appellants'] contention is that representatives of the press have a right to attend and report trials of persons accused of crime . . . and that photographic portrayals of the trial scenes, if obtained without disturbance, are as legally permissible as verbal description. . . . The constitutional right of the accused to a public trial is a privilege intended for his benefit. It does not entitle the press or the public . . . to employ photographic means of picturing his plight in the toils of the law . . .
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> The ability of a photographer to take a picture in court without noise or distraction and without the knowledge of the judge is not a reason why he should be at liberty to ignore a positive judicial order forbidding the use of cameras at the trial . . . The photographer's act was clearly none the less a contempt because the judge was not conscious at the time that his order was being disobeyed.[15]

A Cleveland trial judge held the city editor, a reporter, and a photographer of the *Cleveland Press* in contempt in 1954 for taking and publishing pictures, despite a ban on cameras, at an arraignment. The defendants challenged the constitutionality of Canon 35, but the Ohio court of appeals affirmed the contempt judgment and ruled that the trial judge's ban on photography did not violate the constitutional right of freedom of the press. That decision was upheld by the Ohio supreme court in December 1954 and by the U.S. Supreme Court last May.

[15] Ex parte Sturm, 51 A.L.R. 356 (1927). The court quoted with approval a decision of the Georgia supreme court in an earlier case: "The constitutional right to speak and print does not necessarily carry with it the right to reproduce the form and features of man."—Pavesich v. New England Life Insurance Co., 50 S.E. 68 (1906).

The Ohio court of appeals noted the fact that Canon 35 was recognized as "necessary courtroom decorum" by many bar associations and individual judges and then went on to state:

> A court in enforcing reasonable courtroom decorum is preserving the constitutional . . . right of a litigant to a fair trial, and . . . [in doing so] the court does not interfere with the freedom of the press . . . There is no claim . . . that all who wanted to attend this session of the court were not permitted to do so, or that the opportunity to report the proceeding was not afforded in keeping with courtroom decorum, such right being limited by requiring that the reporter act so that the proceeding of the court should not be disturbed . . .
>
> The evidence shows that the acts of the defendants caused a disturbance and distracted the court . . . The defendants claim that such disturbance was only . . . "momentary." It is enough if defendants' acts in ignoring the court's order not to take pictures caused a distraction or had the potential possibility of doing so.[16]

With respect to TV coverage of judicial proceedings, it has been observed that "While there is apparently no right to televise a trial, a telecast . . . would not be unlawful *per se*." [17] A federal district court ruled a few years ago—in a decision sustained by the Supreme Court—that a radio station had no vested right to broadcast a trial and that the action of a state court in refusing one station that privilege, while granting it to another, did not violate constitutional civil rights. The judge said: "It may be, some day, that broadcasting and television may be considered a vested right of news-gathering agencies, but the flexibility of my mind cannot comprehend that such unusual privileges have thus far jelled into a right." [18]

Disputed Aspects of Courtroom Photography

OPPONENTS of courtroom photography maintain that picture-taking causes disturbances, destroys the decorum of the court, and degrades the dignity of judicial proceedings. According to a California judge: "When the court-

[16] State v. Clifford, 118 N.E. 2d 853 (1954); affirmed, 123 N.E. 2d 8 (1954); cert. denied, 349 U.S. 929 (1955).
[17] Paul J. Yesawich, Jr., "Televising and Broadcasting Trials," *Cornell Law Quarterly*, Summer 1952, p. 713.
[18] Earle C. Anthony, Inc. v. Morrison, 83 F. Supp. 494 (1948); affirmed, 173 F. 2d 897 (1949); cert. denied, 338 U.S. 819 (1949).

room is invaded by an army of reporters with cameras, sound-recording devices, and television equipment, no judge . . . can maintain the order and decorum which are essential . . . Under such circumstances he might as well try to hold court in a circus tent with the circus going full blast." [19] A federal judge has written:

> Witnesses, jurors, parties, attorneys, and the judge must give undivided attention to the serious and all-important matter of . . . the case on trial . . . Even with no distraction whatever it is difficult enough to search out the truth . . . and correctly determine and apply the law. No reasonable person . . . can deny that picture-taking, broadcasting, and televising involve some confusion and distraction, however skillfully accomplished with the most modern equipment.
>
> Substantial distraction . . . is bound to occur whenever the attention of any participant in a trial is directed toward posing or performing for public consumption. The very concealment of the means and occurrence may amplify the distraction since no one can know at what moment he may be on the air, the TV screen, or posing for the next edition of the papers.[20]

Defenders of cameras in the court nevertheless contend that recent technical advances have made courtroom coverage possible without—to use the words of Canon 35—detracting from the essential dignity of the proceedings or degrading the court. Press photographers point out that they no longer need large cameras and flash guns; they can now use miniature cameras with fast interchangeable lenses and high-speed films—a combination that enables them to work unnoticed under normal lighting conditions. Television men note that modern TV cameras likewise have become compact and nearly or completely noiseless, so that they too can operate unobtrusively under ordinary room illumination.

The television equipment used at the Waco trial last December was installed on a balcony. Cameramen shooting TV films of trials in Oklahoma City have used a specially built booth panelled to simulate the walls of the courtroom and designed to permit the camera lens to "shoot" through an aperture; the slight additional lighting used is obtained from the regular courtroom fixtures.

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[19] Statement by Judge Philbrick McCoy of the California superior court before American Judicature Society, Atlanta, Mar. 6, 1954, reprinted in *Editor & Publisher*, Mar. 13, 1954, p. 10. McCoy is chairman of the advisory committee directing the American Bar Foundation study of the canons of ethics.

[20] George H. Boldt (U.S. District Judge for Western District of Washington), "Should Canon 35 Be Amended? A Federal Judge Answers No," *American Bar Association Journal*, January 1955, p. 57.

Those who deny that TV coverage of trials is disturbing direct attention to the fact that televising of naturalization proceedings is specifically sanctioned by Canon 35 "for the purpose of publicly demonstrating the essential dignity and the serious nature of naturalization." They note, furthermore, that church services, presidential inaugurations, and the coronation of Queen Elizabeth have been televised without loss of dignity. Sessions of the U.N. General Assembly and its principal committees have been telecast for several years.

Photographers concede that the brashness for which they have been noted would not comport with courtroom decorum, but they contend that cameramen are more disciplined today than in the past. They agree that obtrusive equipment or offensive personnel should be kept out of the courtroom, but they believe that the court's contempt powers would provide as ample restraint on the behavior of cameramen as on the conduct of counsel or witnesses.

Possibility of Fair Trial With Television Coverage

Assurance that trials could be televised without trespassing on the dignity of court proceedings would not be sufficient to satisfy all critics of courtroom photography. According to Allen T. Klots, now president of the New York City Bar Association, "the fundamental objection would remain."

> A judicial inquiry as a result of which the state may ultimately . . . deprive a human being of his life, liberty, or property still would be turned into a public show; the judge, jury, counsel, parties, and witnesses would become actors in a drama offered for public consumption. Justice cannot truly be dispensed under such circumstances . . .
>
> Justice can be hoped for only in a proceeding that is conducted in a sober, restrained, dispassionate, and objective atmosphere. Television and broadcasting would serve to remove trials from the atmosphere of the courtroom to that of the market place.[21]

The American Civil Liberties Union has declared that the "safeguards of due process and the insuring of fair play" are paramount to the achievement of justice. "Adequate press and public representation . . . at the trial . . . contributes to those ends," but "coverage . . . by motion pictures . . . television or radio may tend to impair them."

It has been asserted that, with trials on television, law-

[21] Allen T. Klots, "Trial by Television," *Harper's Magazine*, October 1951, pp. 93-94.

yers might start "mugging" and "playing to the galleries" and might dramatize their examinations and summations to the extent that emotion would tend to overshadow evidence. However, P. A. Sugg, manager of the Oklahoma City station that has televised several trials, told the Colorado supreme court referee last month that "TV doesn't make hams" but on the contrary frequently exposes them. And Judge Bartlett, who presided at the Waco trial, has ventured the opinion that, possibly because that trial was telecast, the lawyers did not indulge in "any horseplay."

It has been contended that many lawyers and judges active in politics might try to use televised trials for their own political advantage. Elected judges in particular, it is suggested, would be susceptible to that temptation. But defenders of TV coverage note that while many judges win acclaim for conduct of trials, others equally well qualified receive less public notice than they deserve; television might rectify that inequity.

Opponents of courtroom TV object that it might encourage witnesses to romanticize in giving testimony. Witnesses prone to stage fright might be all the more terrified if forced to "perform" for a large audience outside the courtroom. In a sensational trial, according to one federal judge, "The knowledge of a witness that he is talking to the whole United States . . . is bound in many instances to have a disastrous effect upon the natural and straightforward character of his testimony." [22]

TV spokesmen dispute such contentions by asserting that the fears of most witnesses result not from being photographed but from being in court in the first place. They maintain that it should be no more disconcerting to a witness to know that his testimony is being recorded by an unobtrusively placed TV camera than by a battery of reporters taking notes at the press table.

Persons who question the wisdom of televising trials point out that telecasts from the courtroom would provide only fragmentary presentation of most trials; even if an entire trial were broadcast, TV viewers would watch it only intermittently. Members of the home audience prob-

[22] Florence E. Allen (Judge of the U.S. Court of Appeals for the Sixth Circuit), "Fair Trial and Free Press: No Fundamental Clash Between the Two," *American Bar Association Journal*, October 1955, p. 900.

ably would make their judgments, not on the basis of all the evidence, but on the basis of what they had seen, and inevitably such public judgments would tend to make themselves felt inside the courtroom.

Exponents of TV reject such arguments on the ground that no other account of a trial—except the official transcript—is complete. Why, they ask, should broadcasting present every moment of a trial when no other medium does so? Accounts given by newspapers are selective, and a picture can report more objectively than the written word. Televising a trial, Justin Miller has said, would give an "accurate, faithful presentation of what goes on in the courtroom." Any part of a trial that was televised would be "in proper perspective" and would show "exactly what each participant looks like, how he acts, his changing expressions, the reactions of the jury . . . [and] witnesses, [and] the sincerity or falsity of advocacy." [23]

CONTRIBUTION OF COURTROOM TV TO PUBLIC EDUCATION

Advocates of television coverage of trials argue that it affords a valuable means of educating the public on functioning of the judicial system. They say the general public is filled with misconceptions about operation of the courts and that television coverage would erase such misconceptions. Miller has maintained that attending court is highly desirable for intelligent participation in government, and that televising trials would stimulate interest in courtroom proceedings and provide a substitute for those unable to attend in person. "It is highly inconsistent," he told Justice Moore of the Colorado supreme court on Feb. 6, "to complain of the ignorance and apathy of voters and then . . . close the windows of information through which they might observe and learn."

Others deny that telecasting of trials would be instructive. They argue that such telecasts would offer, not education, but merely entertainment for the curious and prurient. TV trials would not educate because only those involving sordid crimes would be given wide coverage. "To televise such proceedings," one observer has written, "is merely to aid in the dissemination of that undesirable publicity which may well foster the corruption of an already

[23] Testimony at Colorado supreme court hearing, Denver, Feb. 6, 1956. Miller appeared in behalf of the N.A.R.T.B.

wavering public morality."[24] Furthermore, if television coverage of trials were permitted generally, some stations would start sensationalizing cases to win listeners; eventually telecasts of trials might even be sponsored commercially.

TV spokesmen argue, on the contrary, that telecasts of trials are especially suitable for showing in schools. They point out that the telecast of the Waco trial was watched by civics classes in central Texas high schools and law classes at Baylor University. "How many parents," Miller observed at the Colorado hearing, "would welcome an opportunity for . . . [their children] to see and hear the solemn proceedings of a courtroom, demonstrating that 'crime does not pay,' or the way in which the problems of life are settled in courts of civil jurisdiction?" But officials of the American Civil Liberties Union have countered that "It is hard to see how children can be expected to decide questions of guilt or innocence based upon applicable law." They ask: "If a defendant who appears guilty to a child is acquitted, won't this encourage children to believe that crime does pay?"[25] Acquittal of a defendant on a legal technicality, it is asserted, might well confuse even an adult.

Impact of Picture Ban On the People's Right to Know

Judges who have admitted cameras to trials over which they have presided have made the point that courts must be open to the public and that the people have a right to know what goes on there. Because not everyone can assemble in the courtroom, it is necessary to report the proceedings to the public. Cameras can bring the proceedings to larger numbers and thus make them more public than ever before. Telecasters and press photographers insist that they have just as much right to cover trials as newspaper reporters, whose right to do so is rarely disputed.

In his report to the Colorado supreme court, Justice Moore took note of the constitutional guarantees of free-

[24] Paul J. Yesawich, Jr., "Televising and Broadcasting Trials," *Cornell Law Quarterly*, Summer 1952, pp. 708-709. John Ben Shepperd, Attorney General of Texas, has said that "The sordid side of crime ought to be carried into homes, for if it is . . . pictured in its true light, it won't have any romantic appeal for boys and girls."—Quoted in *Senior Scholastic*, Jan. 19, 1956, p. 7.

[25] Patrick M. Malin, executive director, and J. Waties Waring, chairman, due process-equality committee, A.C.L.U., letter in *New York Times*, Dec. 26, 1955.

dom of the press and of a public trial. Pointing out that it had "repeatedly been held that the right to a 'public trial' is abridged if the press is excluded," Moore quoted from a 1947 decision of the U.S. Supreme Court, which stated: "A trial is a public event. What transpires in the courtroom is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." [26]

Many of those who object to modifying Canon 35 concede that criminal trials must be open to the public, but they take issue with the doctrine that the public has a right to attend such trials. They note that the guarantee of a "speedy and public" trial was included in the Sixth Amendment for the benefit of the accused—to protect him against star-chamber methods—and that there is no comparable provision for the benefit of the public. On the other hand, Miller argued at the Colorado hearing last month that the due-process concept of the Fifth and Fourteenth amendments "concerned not merely the right of an accused to a public trial, but of the public as well."

Many persons opposed to picture-taking in the courts have pointed out that the constitutional requirement of a public trial was created, and satisfied, long before photography and television came into existence. They maintain that trials will be no less public even if those media continue to be denied access to the courtroom. Those who reject that view may take heart from the contrary expressions contained in the Colorado report.

[26] Craig *v.* Harney, 331 U.S. 367 (1947).